

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Mar 22, 2022**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

HEATHER J KILLINGER, individually,

Plaintiff,

v.

PROGRESSIVE DIRECT  
INSURANCE COMPANY, a foreign  
corporation,

Defendant.

No. 2:22-CV-0012-MKD

STIPULATED PROTECTIVE  
ORDER

Before the Court is the Parties' Stipulated Protective Order. ECF No. 8-1.

On March 17, 2022, the Court held a video scheduling conference in the above-entitled matter. Brandon Casey and Michel Bodey appeared on behalf of Plaintiff. Steven Jensen appeared on behalf of Defendant. During the scheduling conference, the parties requested the Court enter the Stipulated Protective Order submitted by the parties. The Court heard from counsel and is fully informed.

STIPULATED PROTECTIVE ORDER - 1

1 A district court may enter a protective order upon a showing of good cause  
2 to protect a party or person from annoyance, embarrassment, oppression, or undue  
3 burden or expense. Fed. R. Civ. P. 26(c). The Rule confers “broad discretion on  
4 the trial court to decide when a protective order is appropriate and what degree of  
5 protection is required.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984).

6 The parties seek a protective order because discovery in this action is likely  
7 to involve production of confidential, proprietary, or private information for which  
8 special protection is warranted. Having reviewed the proposed Protective Order  
9 and the record, the Court finds that good cause exists to enter the parties’ proposed  
10 Stipulated Protective Order.

11 Accordingly, **IT IS HEREBY ORDERED:**

12 1. The parties’ request for entry of the Stipulated Protective Order is  
13 **GRANTED.** The following Protective Order shall immediately take effect.

14 **PROTECTIVE ORDER**

15 **1. Confidential Material.**

16 “Confidential” material shall include the following documents and tangible  
17 things produced or otherwise exchanged: any UIM and/or PIP claims manuals,  
18 operations manuals, training manuals, training materials, claims handling tools and  
19 internal policies in Washington from April 26, 2018 through the filing of this suit;

20 STIPULATED PROTECTIVE ORDER - 2

1 and medical records and personal identifiers such as date of birth and social  
2 security number.

3 **2. Scope.**

4 The protections conferred by this Order cover not only confidential material  
5 (as defined above), but also (1) any information copied or extracted from  
6 confidential material; (2) all copies, excerpts, summaries, or compilations of  
7 confidential material; and (3) any testimony, conversations, or presentations by  
8 parties or their counsel that might reveal confidential material.

9 However, the protections conferred by this Order do not cover information  
10 that is in the public domain or becomes part of the public domain through trial or  
11 otherwise.

12 **3. Access to and Use of Confidential Material.**

13 A. Basic Principles. A receiving party may use confidential material  
14 that is disclosed or produced by another party or by a non-party in  
15 connection with this case only for prosecuting, defending, or  
16 attempting to settle this litigation. Confidential material may be  
17 disclosed only to the categories of persons and under the conditions  
18 described in this Order. Confidential material must be stored and  
19 maintained by a receiving party at a location and in a secure manner

1 that ensures that access is limited to the persons authorized under  
2 this Order.

3 B. Disclosure of “Confidential” Information or Items. Unless  
4 otherwise ordered by this Court or permitted in writing by the  
5 designating party, a receiving party may disclose any confidential  
6 material only to:

- 7 1. The receiving party’s counsel of record in this action, as well as  
8 employees of counsel to whom it is reasonably necessary to  
9 disclose the information for this litigation;
- 10 2. The officers, directors, and employees (including in house  
11 counsel) of the receiving party to whom disclosure is  
12 reasonably necessary for this litigation, unless the parties agree  
13 that a particular document or material produced is for  
14 Attorney’s Eyes Only and is so designated;
- 15 3. Experts and consultants to whom disclosure is reasonably  
16 necessary for this litigation and who have signed the  
17 “Acknowledgment and Agreement to Be Bound” (attached to  
18  
19

1 this Order as Exhibit A);

2 4. The Court, court personnel, and court reporters and their staff;

3 5. Copy or imaging services retained by counsel to assist in the  
4 duplication of confidential material, provided that counsel for  
5 the party retaining the copy or imaging service instructs the  
6 service not to disclose any confidential material to third parties  
7 and to immediately return all originals and copies of any  
8 confidential material;

9 6. During their depositions, witnesses in the action to whom  
10 disclosure is reasonably necessary and who have signed the  
11 “Acknowledgment and Agreement to Be Bound,” unless  
12 otherwise agreed by the designating party or ordered by the  
13 court. Pages of transcribed deposition testimony or exhibits to  
14 depositions that reveal confidential material must be separately  
15 bound by the court reporter and may not be disclosed to anyone  
16 except as permitted under this Order;

17 7. The author or recipient of a document containing the  
18 information or a custodian or other person who otherwise  
19

1                    possessed or knew the information.

2            C. Filing Confidential Material. Before filing confidential material or  
3            discussing or referencing such material in court filings, the filing  
4            party shall confer with the designating party to determine whether  
5            the designating party will remove the confidential designation,  
6            whether the document can be redacted, or whether a motion to seal  
7            or stipulation and proposed order is warranted. During the meet and  
8            confer process, the designating party must identify the basis for  
9            sealing the specific confidential information at issue, and the filing  
10           party shall include this basis in its motion to seal, along with any  
11           objection to sealing the information at issue.

12           **4. Exercise of Restraint and Care in Designating Material for**  
13           **Protection.**

14           Each party or non-party that designates information or items for protection  
15           under this Order must take care to limit any such designation to specific material  
16           that qualifies under the appropriate standards. The designating party must  
17           designate for protection only those parts of material, documents, items, or oral or  
18           written communications that qualify, so that other portions of the material,  
19           documents, items, or communications for which protection is not warranted are not

1 swept unjustifiably within the ambit of this Order.

2 Mass, indiscriminate, or routinized designations are prohibited.

3 Designations that are shown to be clearly unjustified or that have been made for an  
4 improper purpose (*e.g.*, to unnecessarily encumber or delay the case development  
5 process or to impose unnecessary expenses and burdens on other parties) expose  
6 the designating party to sanctions.

7 If it comes to a designating party's attention that information or items that it  
8 designated for protection do not qualify for protection, the designating party must  
9 promptly notify all other parties that it is withdrawing the mistaken designation.

10 **5. Manner and Timing of Designations.**

11 Except as otherwise provided in this Order or as otherwise stipulated or  
12 ordered, disclosure or discovery material that qualifies for protection under this  
13 Order must be clearly so designated before or when the material is disclosed or  
14 produced.

15 A. Information in documentary form: (*e.g.*, paper or electronic  
16 documents and deposition exhibits, but excluding transcripts of  
17 depositions or other pretrial or trial proceedings), the designating  
18 party must affix the word "CONFIDENTIAL" to each page that  
19 contains confidential material. If only a portion or portions of the

1 material on a page qualifies for protection, the producing party also  
2 must clearly identify the protected portion(s) (*e.g.*, by making  
3 appropriate markings in the margins).

4 B. Testimony given in deposition or in other pretrial proceedings: the  
5 parties and any participating non-parties must identify on the  
6 record, during the deposition or other pretrial proceeding, all  
7 protected testimony, without prejudice to their right to so designate  
8 other testimony after reviewing the transcript. Any party or non-  
9 party may, within fifteen days after receiving the transcript of the  
10 deposition or other pretrial proceeding, designate portions of the  
11 transcript, or exhibits thereto, as confidential. If a party or non-  
12 party desires to protect confidential information at trial, the issue  
13 should be addressed during the pre-trial conference.

14 C. Other tangible items: the producing party must affix in a prominent  
15 place on the exterior of the container or containers in which the  
16 information or item is stored the word "CONFIDENTIAL." If only  
17 a portion or portions of the information or item warrant protection,  
18 the producing party, to the extent practicable, shall identify the  
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1                   protected portion(s).

2                   **6. Inadvertent Failures to Designate**

3                   If timely corrected, an inadvertent failure to designate qualified information  
4 or items does not, standing alone, waive the designating party's right to secure  
5 protection under this Order for such material. Upon timely correction of a  
6 designation, the receiving party must make reasonable efforts to ensure that the  
7 material is treated in accordance with the provisions of this Order.

8                   **7. Challenging Confidentiality Designations.**

9                   A. Timing of Challenges. Any party or non-party may challenge a  
10 designation of confidentiality at any time. Unless a prompt  
11 challenge to a designating party's confidentiality designation is  
12 necessary to avoid foreseeable, substantial unfairness, unnecessary  
13 economic burdens, or a significant disruption or delay of the  
14 litigation, a party does not waive its right to challenge a  
15 confidentiality designation by electing not to mount a challenge  
16 promptly after the original designation is disclosed.

17                  B. Meet and Confer. The parties must make every attempt to resolve  
18 any dispute regarding confidential designations without court  
19 involvement. Any motion regarding confidential designations or

1 for a protective order must include a certification, in the motion or  
2 in a declaration or affidavit, that the movant has engaged in a good  
3 faith meet and confer conference with other affected parties in an  
4 effort to resolve the dispute without court action. The certification  
5 must list the date, manner, and participants to the conference. A  
6 good faith effort to confer requires a face-to-face meeting or a  
7 telephone conference.

8 C Judicial Intervention. If the parties cannot resolve a challenge  
9 without court intervention, the designating party may file and serve  
10 a motion to retain confidentiality. The burden of persuasion in any  
11 such motion shall be on the designating party. Frivolous  
12 challenges, and those made for an improper purpose (*e.g.*, to harass  
13 or impose unnecessary expenses and burdens on other parties) may  
14 expose the challenging party to sanctions. All parties shall continue  
15 to maintain the material in question as confidential until the court  
16 rules on the challenge.

17 **8. Protected Material Subpoenaed or Ordered Produced in Other**  
18 **Litigation**

19 If a party is served with a subpoena or a court order issued in other litigation  
20 that compels disclosure of any information or items designated in this action as  
STIPULATED PROTECTIVE ORDER - 10

1 “CONFIDENTIAL,” that party must: (1) promptly notify the designating party in  
2 writing and include a copy of the subpoena or court order; (2) promptly notify in  
3 writing the party who caused the subpoena or order to issue in the other litigation  
4 that some or all of the material covered by the subpoena or order is subject to this  
5 Order. Such notification shall include a copy of this Order; and (3) cooperate with  
6 respect to all reasonable procedures sought to be pursued by the designating party  
7 whose confidential material may be affected.

8 **9. Unauthorized Disclosure of Protected Material.**

9 If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
10 confidential material to any person or in any circumstance not authorized under  
11 this Order, the receiving party must immediately: (1) notify in writing the  
12 designating party of the unauthorized disclosures, (2) use its best efforts to retrieve  
13 all unauthorized copies of the protected material, (3) inform the person or persons  
14 to whom unauthorized disclosures were made of all the terms of this Order, and (4)  
15 request that such person or persons execute the “Acknowledgment and Agreement  
16 to Be Bound.”

17 **10. Inadvertent Production of Privileged or Otherwise Protected**  
18 **Material.**

19 When a producing party gives notice to receiving parties that certain  
20 inadvertently produced material is subject to a claim of privilege or other  
STIPULATED PROTECTIVE ORDER - 11

1 protection, the obligations of the receiving parties are those set forth in the Federal  
2 Rules of Civil Procedure, including those set forth in FRP 26(b)(5). This provision  
3 is not intended to modify whatever procedure may be established in an e-discovery  
4 order or Order that provides for production without prior privilege review. The  
5 parties agree to the entry of a non-waiver order under ER 502(e) as set forth herein.

6 **11. Non-Termination and Return Of Documents.**

7 Within 60 days after the termination of this action, including all appeals,  
8 each receiving party must return all confidential material to the producing party,  
9 including all copies, extracts and summaries thereof. Alternatively, the parties  
10 may agree upon appropriate methods of destruction.

11 Notwithstanding this provision, counsel is entitled to retain one archival  
12 copy of all documents filed with the court, trial, deposition, and hearing transcripts,  
13 correspondence, deposition and trial exhibits, expert reports, attorney work  
14 product, and consultant and expert work product, even if such materials contain  
15 confidential material.

16 The confidentiality obligations imposed by this Order shall remain in effect  
17 until a designating party agrees otherwise in writing or until a further Order of the  
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1 Court provides otherwise.

2 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this  
3 Order and provide copies to counsel.

4 DATED March 22, 2022.

5 *s/Mary K. Dimke*  
6 MARY K. DIMKE  
7 UNITED STATES DISTRICT JUDGE  
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## EXHIBIT A

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_  
[print or type full address], declare  
under penalty of perjury that I have read in its entirety and understand the  
Stipulated Protective Order that was issued by the United States District Court,  
Eastern District of Washington in the case of HEATHER J. KILLINGER v.  
PROGRESSIVE DIRECT INSURANCE COMPANY, Case No. 2:22-CV-00012-  
MKD. I agree to comply with and to be bound by all the terms of this Stipulated  
Protective Order and I understand and acknowledge that failure to so comply could  
expose me to sanctions and punishment in the nature of contempt. I solemnly  
promise that I will not disclose in any manner any information or item that is  
subject to this Stipulated Protective Order to any person or entity except in strict  
compliance with the provisions of this Order. I further agree to submit to the  
jurisdiction of the United States District Court, Eastern District of Washington for  
the purpose of enforcing the terms of this Stipulated Protective Order, even if such  
enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_